



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

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Ms. Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3950

October 25, 2007

Re: Clean Data Finding for Determining
Attainment of the 1-hour Ozone National
Ambient Air Quality Standard (NAAQS)
for Lake and Porter Counties, Indiana

Dear Ms. Gade:

On April 30, 2004, the United States Environmental Protection Agency (U.S. EPA) published the first phase of its final rule to implement the 8-hour ozone national ambient air quality standard (Phase 1 Implementation Rule). The 8-hour ozone nonattainment designation for Lake and Porter counties became effective on June 15, 2004. The Phase 1 Implementation Rule provided that the 1-hour ozone NAAQS would no longer apply for an area one (1) year following the effective date of the area's designation for the 8-hour ozone NAAQS. As such, on August 3, 2005, U.S. EPA published a final rule (70 FR 44470) to codify the revocation of the 1-hour standard for those areas (including Lake and Porter counties) with effective 8-hour ozone designations.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit issued a determination that in the Phase I Implementation Rule, U.S. EPA improperly determined that areas would no longer be subject to 1-hour ozone NAAQS new source review requirements, section 185 penalty fees for failure of severe and extreme areas to attain the 1-hour ozone NAAQS and contingency measures for failure to attain or make reasonable further progress toward attainment of the 1-hour ozone NAAQS. In response to the U.S. EPA petition for re-hearing and clarification of the December 22, 2006 decision, the U.S. Court of Appeals for the District of Columbia Circuit reaffirmed its earlier decision with regards to anti-backsliding (as outlined in the U.S. EPA Office Memorandum by Robert Myers, Acting Assistant Administrator, dated June 15, 2007).

Based on the implications of the court's ruling, the Indiana Department of Environmental Management (IDEM) is requesting that the U.S. EPA issue a clean data finding for Indiana's portion of the Chicago-Gary-Lake, IL-IN 1-Hour Ozone Non-Attainment Area (i.e. Lake and Porter counties). The basis for this request is grounded in a U.S. EPA policy that has been in existence for over a decade, and court precedent set forth in three separate U.S. Circuit Court Appeals cases¹ (Seventh, Ninth and Tenth Circuits) that upheld U.S. EPA rulemakings applying the Clean Data Policy². In its rulemaking process, the U.S. EPA indicated that when a nonattainment area has attained the standard, the need for showing reasonable further progress, an attainment demonstration and contingency measures are no longer necessary.³

The State of Indiana has met all the 1-hour ozone nonattainment area requirements applicable to Lake and Porter counties. This includes a fully approved attainment SIP and associated reasonably available VOC reduction control measures (i.e., RACT, RACM, NSR, transportation control measures), rate-of-progress plans, contingency measures, and the submittal of a midcourse review document on January 31, 2005.

IDEM has enclosed ozone (and ozone precursor) monitoring data (see Exhibit A) that demonstrates that air quality in Lake and Porter counties has demonstrated attainment with the 1-hour ozone NAAQS since 2004. This data also demonstrates that the improvement in ozone air quality is consistent with the reductions in local VOC emissions (see Exhibits B and C) due to motor vehicle control programs, including vehicle inspection and maintenance, and reformulated gasoline; area source control programs, and stationary source programs. Significant regional NO_x reductions (see Exhibits B and C) following implementation of Phase II NO_x and CAIR will also ensure continued compliance (maintenance) with the standard.

Although this request only pertains to Lake and Porter counties, it should also be noted that all of the monitoring sites in the remaining portion of the nonattainment area (i.e., N.E. Illinois and S.E. Wisconsin) have demonstrated attainment with the 1-hour ozone NAAQS as well.

Lake and Porter counties met the 1-hour ozone standard prior to it being revoked. However, based on the criteria detailed in the Phase I Implementation Rule and subsequent revocation of the 1-hour standard, the State of Indiana did not proceed with a request for redesignation and maintenance plan prior to the standard being revoked. As such, the State of Indiana should not be wrongfully penalized for abiding by published rules and guidance that were subsequently overturned.

¹ *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir., 2004), *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir., 1996), and *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir., June 28, 2005) memorandum opinion, citing, 70 FR 71612, 71645 (Nov. 29, 2005).

² U.S. EPA Memorandum from John Seitz, *Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* (May 10, 1995).

³ 68 FR 62041, 62044 (Oct. 31, 2003).

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IDEM hereby requests that the U.S. EPA proceed with its review of this request and timely issuance of a clean data finding. If you have any questions or need additional information, please contact Daniel Murray, Assistant Commissioner, at (317) 232-8222.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom W. Easterly', written over a horizontal line.

Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

Attachments

cc: Jay Bortzer, US EPA
John Mooney, US EPA
Daniel Murray, IDEM
Scott Deloney, IDEM

